



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION
Case #: MGE - 203723

PRELIMINARY RECITALS

Pursuant to a petition filed on November 17, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on December 7, 2021, by telephone.

The issue for determination is whether the agency correctly determined the petitioner's patient liability.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]

Petitioner's Representative:

[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 22, 2021, the agency sent a notice to the petitioner stating that effective June 1, 2021 she was enrolled in MA (Nursing Home Long Term Care) and had a patient liability of \$3174.77.

DISCUSSION

After an institutionalized person has been found eligible for MA, the agency must calculate a “cost of care” or patient liability. Patient liability is the amount that s/he will pay each month to partially offset the cost of nursing home services with the MA program paying the balance. The liability amount is typically calculated by subtracting from the recipient’s income, any health insurance premium costs, support payment costs, home maintenance costs, expenses for court-ordered guardians or protective placements, and a statutory personal needs allowance. The funds remaining after these deductions are considered is determined to be available for payment to the nursing home by the recipient. See Medicaid Eligibility Handbook (MA Handbook), §27.7. 1; see also Wis. Stat. §[49.45\(7\)\(a\)](#), Wis. Adm. Code § [DHS 103.07\(1\)\(d\)](#), and 42 CFR §435.725.

Petitioner does not dispute the calculation per se, but rather is asking that her net income be considered because she will eventually be overdrawn as she does not actually receive the full gross income used in the calculation for the patient liability. Unfortunately for the petitioner, the law and policy require the use of gross income. See MA Handbook §15.1.5. I can find no authority in federal law or in state law or policy for using net income when determining the patient liability as requested. Beyond the legal allowances, petitioner’s representative’s argument is an equitable argument, and I lack the equitable powers (the ability to change the course of the action based on any fairness argument) to grant the relief sought. See Oneida County v. Converse, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). In other words, I cannot change the outcome based on a fairness argument.

CONCLUSIONS OF LAW

1. The agency correctly determined the petitioner's patient liability.

THEREFORE, it is

ORDERED

That the petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

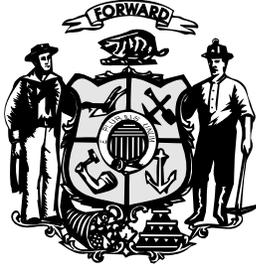
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of January, 2022

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 24, 2022.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability

